IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9832 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ODHAVJI NANJI

Versus

STATE OF GUJARAT & ANR

Appearance:

1. Special Civil Application No. 9832 of 1992

MR DM THAKKAR for Petitioner No. 1

Mr. Ketan M. Parikh, ASSTT. GOVERNMENT PLEADER for Respondent Nos. 1-3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/08/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to give pensionary benefits including gratuity etc. and further to make payment of

pension and gratuity with interest at the rate of 18% per annum and for a further direction to the respondents to fix the pension of the petitioner and pay the same together with gratuity. The petitioner joined the services in the respondents establishment on 1.5.1967 as a casual labourer and he discharged his duties without any break from 1.5.67 till he retired on 31st January, 1992. The petitioner was regularised by an order dated 15.4.1987. It is also stated that the petitioner being a regular employee is entitled for post retiral benefits like pension, gratuity etc. The respondent no.2 by a communication dated 13th September, 1991 asked the petitioner to complete certain formalities for the purpose of preparing his pension papers. Accordingly, the petitioner completed all formalities before his retirement. Still however, the respondent no. 2 has not paid any amount to the petitioner in connection with his pensionary benefits.

2. Affidavit-in-reply has been filed by the Deputy Executive Engineer, Road and Building Division no.2, Morbi wherein the allegations made by the petitioner have been denied. It is stated that the petitioner was working with the respondent no. 2 with effect from 1.5.67 as a daily wager and he had put in service till 15.4.1987 as a daily wager for certain days in a year, though it is not made clear whether his work was continuously taken or his work was taken only for a few days in a year. The petitioner was taken on work-charged establishment on 15.4.87. Thus, the petitioner has retired after putting in service of 4 years, 9 months and 15 days continuous service on workcharge establishment. The petitioner is not entitled to receive the claim as made by him in the petition as per the Government resolution dated 6.1.1992 issued by the Director of Pension and Provident Fund. It is also stated that the petitioner's service cannot be considered for pension and gratuity in light of other resolutions dated 8.10.1976 and 16.1.1991 as the petitioner has not put in 10 years continuous service on work-charged establishment, the case of the petitioner cannot be considered either for pension or gratuity. Therefore, he is not entitled to reliefs as prayed for in the petition.

3. It is pointed out by the learned Assistant Government Pleader that another affidavit-in-reply has been filed by some other Deputy Executive Engineer, R and B Division no. 2, Morbi-respondent no. 2. Though this affidavit-in-reply is not on record, however, on the basis of the copy of the affidavit-in-reply produced by the learned A.G.P., it

is stated therein that the petitioner was working with the respondent no. 2 with effect from 1.5.1967 as a daily wager and he had put in service till 15.4.1987 as a daily wager for certain days in a year. By an order dated 15.4.1987, the petitioner was taken on work-charged establishment. Thus, the petitioner had put in continuous service of 4 years, 9 months and 15 days on work-charged establishment. Hence, he is not entitled for gratuity or pension as claimed by him pursuant to the Government resolution dated 6.1.1992 issued by the Director of Pension and Provident Fund and the petitioner has not put in 10 years continuous service on work-charged establishment. Hence, he is not entitled for any relief.

4. I have heard the learned counsel for the parties and perused the relevant papers on record. The learned AGP has produced a Government resolution dated 8.1.1976. That is in respect of the pay scale of posts of work-charged establishment and that resolution dated 8.1.1976 has been amended by the Government resolution dated 16.1.1991 and it has been mentioned therein that the work-charged employees under PWD, now Narmada and Water Resources Department (Exclusive Panchayats) who have completed five years continuous service on work-charged establishment or temporary establishment or permanent establishment and who retired on or after 8.1.1976 should be treated at par with persons on temporary establishment under PWD, now Narmada and Water Resoruces Department in the matter of pensionary benefits and GPF scheme and this amendment was issued with the concurrence of Finance Department dated 26th December, 1990. In the present case, it is not disputed that the petitioner joined services as a daily rated worker establishment from 1.5.67. There is a distinction between temporary work-charged establishment and permanent establishment. Temporary work-charged establishment can be abolished at any time and the services of the employees working on temporary work-charged establishment can also be terminated treating them as temporary servant. In the present case, the petitioner joined the services on 1.5.67. It is true that the department has not filed any statement of services of the petitioner to show that the petitioner's services were taken temporarily for a few days in a year. On the other hand, the petitioner stated in the petition that he has continuously discharged his duties without any break from 1.5.67 till he retired on 31st January, 1992. In absence of any statement of the department concerned, it will be deemed that the petitioner worked and discharged his duties without any break from 1.5.67

till his retirement i.e. on 31.1.1992. In the present case, the petitioner will be deemed to be taken on temporary work-charged establishment after 5 years from 1.5.1972 as per the resolution dated 16.1.1991. Once the petitioner is deemed to be taken on temporary work-charged establishment, then the services of the petitioner remain continued till 15.4.1987 when he was taken on permanent work-charged establishment as the petitioner has not been removed from his office, temporary work-charged or temporary work establishment has not been removed at all. The petitioner has been taken on permanent establishment on 15.4.1987, it will be deemed that the petitioner was taken on permanent establishment from 1.5.1972. Thus, the petitioner will be deemed to be an employee of permanent work-charged establishment from 1.5.72. As stated by the learned AGP, the employee is entitled for pensionary benefits after continuous service of 10 years on permanent establishment. As the services of the petitioner have been treated on the permanent work-charged establishment from 1.5.72, the petitioner would be entitled for pensionary benefits as having served the department for more than 10 years. However, in the facts and circumstances of the case, the petitioner will be deemed to be an employee of permanent workcharged establishment notionally from 1.5.1972 and he will be entitled only for pensionary benefits after his retirement treating the petitioner on permanent establishment from 1.5.72. Besides pensionary benefits, the petitioner will not be entitled for any other benefits such as increments and promotional benefits etc.

5. In the facts and circumstances, this petition deserves to be allowed and is hereby accordingly allowed. The respondents are directed to calculate pensionary benefits treating the petitioner on permanent work-charged establishment notionally from 1.5.1972 and pay the same to him within a period of three months from the date of receipt of writ from this Court. Rule is made absolute accordingly with no order as to costs.

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